IN THE HIGH COURT OF JUDICATURE AT BOMBAY

T. & I. J.

...

NOTICE OF MOTION NO.125 OF 2006

IN

PETITION NO.835 OF 2005

...

Kishanchand Laxmandas Aidasani
and 2 others. ...Petitioners

v/s.

Chandra Alias Gullu Ramesh
Manghnani ...Respondent

...

Ms.Sheela Tambe i/b Majoj Bhatt for the Petitioners.
Ms.Sushma Kulkarni for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 15TH DECEMBER,2006

P.C.:

1. This Notice of Motion is taken out by the Petitioners. The Petitioners have filed the petition for probate of the Will left behind by Laxmandas Lokumal Aidasani, who died on 17th May, 1998.

2. The admitted position is that the citation was served on the cavetrix on 20th March, 2006. She filed a caveat on 29th March, 2006. It was served on the Petitioners on 1st April, 2006 and that till today affidavit in support of the caveat has not been filed. Reply is filed by the cavetrix in this Notice of Motion. In paragraph 12 she states that after filing the caveat on 29-3-2006 she could not remove the objection and filed an affidavit as she was sick. She states that she has undergone major surgery and she was advised to take bed rest for two months. In support of her case she has filed a report from the hospital.

3. Perusal of the report filed along with affidavit

shows that she was admitted in hospital on 28-2-2006 and was discharged from the hospital on 4-3-2006. In the documents that have been produced in the court it is not found that the Doctors have advised her to take bed rest for two months. Even assuming that the cavetrix was advised to take bed rest for two months, the date of her discharge is 4-3-2006, and two months will be over in May, 2006. But till today the cavetrix has not filed any affidavit in support of the caveat, though she has filed an affidavit opposing this Notice of Motion.

4. The learned Counsel appearing for the cavetrix is not able to explain why if the cavetrix could come to the court for filing an affidavit to oppose this Notice of Motion, why at the same time she could not file an affidavit in support of the caveat. The conduct of the cavetrix shows that she is not serious about prosecuting the caveat. The result of merely filing a caveat and not filing an affidavit in support of the caveat is that the petition filed by the Petitioner remains pending.

5. Taking overall view of the matter, therefore, as I find that the cavetrix has not been able to explain

why she was not able to file affidavit in support of the caveat even till today, Notice of Motion deserves to be granted. Notice of Motion is, therefore, granted in terms of prayer clause (a) excluding bracketed portion. The office is directed to proceed further in the matter in accordance with law.

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